

**STRATEGY
RESEARCH
PROJECT**

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**RELOOKING DOMESTIC COUNTERDRUG STRATEGY:
IS THERE AN INCREASED ROLE FOR THE MILITARY?**

BY

**LIEUTENANT COLONEL JAMES W. WHITEHEAD, JR.
United States Army**

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Lieutenant Colonel James W. Whitehead, Jr.

United States Army

Colonel Thomas Carstens
Project Advisor

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U.S. Army War College

Carlisle Barracks, Pennsylvania 17013

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ABSTRACT

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Illegal drugs continue to have negative effects on the American way of life. Are drugs a threat to the security of the United States? There have been proposals from several segments in America to increase the role of the military in the nation's domestic counterdrug strategy. Should the domestic role of the military in the nation's counterdrug strategy increase? The current law prohibits the domestic use of active component military forces without the expressed approval of Congress. This paper discusses a brief history of drug policy in America, the Posse Comitatus Act of 1878 (which is crucial to the role of domestic active military component employment), the congressional amendment to the Posse Comitatus Act in 1981 that clarified the role of the military in supporting federal, state, and local law enforcement agencies. Additionally, the paper reviews Gallup Polls about who Americans think is responsible for stopping illegal drug use and if Americans agree with statements about drug strategies. Viable alternatives to the employment of active military forces are reviewed. The paper concludes that the nation's current counterdrug strategy is effective and that sufficient reasons to increase the domestic role of the military do not exist.

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Introduction

According to a recent Gallup Poll, almost one half (45%) of Americans report that either they, someone in their family, or a close friend has used illegal drugs. More than half of those who reported knowing someone with a moderate or serious drug problem were living in households with income of \$35,000 or more, and most were white. Clearly, drugs are not a problem just for inner-city residents, or the poor, or members of some minority group—they affect all Americans from every social, racial, and economic background.¹

Drugs affect many Americans and their use is not restricted to a particular income level. Because drugs affect so many Americans, a national strategy is devised every year to reduce illicit drug use and its consequences.

Drug use or abuse is not new to America. American leaders have had programs or strategies to combat the effects of illegal drugs on American society since the late 1800's. The first American anti-drug law was an 1875 San Francisco ordinance that outlawed the smoking of opium². Cocaine was outlawed in the early 1900's and marijuana was outlawed in 1937³. Historically the government has asserted its authority to protect the American public from the devastating effects of illegal drugs. But to what extent can the federal government devise and employ strategies to protect the American public without infringing on individual liberties? And in employing strategies to stem the flow and distribution of illegal drugs into the United States, should there be an increased role for the military, specifically the active component? Current law prohibits the domestic use of active component military forces without the expressed approval of the United States Congress. The central issue is whether or not the nation's drug problems are severe enough to warrant changing the law. This paper will discuss several points to provide a strategic answer to this issue. These points include a brief history of drug policy in

America, budgets to support the current counterdrug strategy are adequate, the Posse Comitatus Act of 1878, the congressional amendment to the Posse Comitatus Act in 1981, and the current role of the military. Viable alternatives to the domestic employment of military forces will also be discussed. The nation is working hard to stem illegal drug use and there is not a need to increase the role of the military.

The History of U.S. Drug Policy

Since the 1870's, laws prohibiting drug use and abuse were enacted to protect the American public. Illegal drug use and abuse are not a new phenomenon to America. Laws prohibiting the use of cocaine were enacted in the early 1900's and laws prohibiting the use of marijuana were enacted the late 1930's. Initial drug control efforts also were intended to restrict the drugs from certain populations. For example, opium was restricted from the Chinese in 1875, cocaine from Blacks in the early 1900's and marijuana from Mexicans in the United States in 1937⁴.

Cocaine and marijuana are the primary illegal drugs affecting American society in the 1990's. Although the federal government could not effectively regulate what individuals could put in their bodies, early laws sidestepped this issue by requiring a license for their use. Licenses were never issued and there was a heavy penalty for not having a license. This meant getting the courts to accept the notion that getting caught with illegal drugs was actually a tax violation and the fact that a license was not issued was not a defense⁵. Other laws regulating illegal drug use included getting the courts to believe that whatever a person puts into their bodies must have come as a result of some

form of interstate commerce, which is regulated by the Federal Government in the form of taxes and licenses⁶.

In recent years, the Reagan Administration renewed its emphasis on drug policy because of the increase in drug use, particularly the casual use of cocaine by middle and upper class Americans. Congress amended the Posse Comitatus Act of 1878 in 1981 (Posse Comitatus will be discussed further in another section of this paper). The original purpose was amended to permit the limited use of active military forces in domestic law enforcement. During the Bush Administration, cocaine use by middle and upper class Americans decreased, but it did not decrease with poorer or lower class Americans. The highly addictive crack cocaine appeared during the 1980's. Drug use increased during this period. Poor people used more cocaine, heroin, and crack by 1992 than when the war on drugs began⁷. It was during the Bush Administration that members of Congress were discussing increasing the domestic role of the military in the nation's counterdrug strategy.

The National Drug Control Budget

Historically, drug control efforts aimed at interdiction and demand reduction programs. In support of the nation's counterdrug programs, the Clinton Administration's drug control budget is grouped into four major functional areas⁸. These functional areas are domestic law enforcement, demand reduction, interdiction, and international programs.

a. Domestic law enforcement (the largest component of the National Drug Control Budget) increased by 9.3 percent, from \$7.6 billion in FY 1996 to \$8.3 billion in FY 1997. Major enhancements include:

- (1) Expanding activities such as the Drug Enforcement Agency's (DEA) Domestic Enforcement operations and the Federal Bureau of Investigation's (FBI) Organized Criminal Enterprise program.
- (2) Expanding treatment bedspace capacity by 2,420.
- (3) Continue goal of hiring 100,000 new policemen by the year 2000.

b. Demand reduction (the second largest component of the National Drug Control Budget) increased by 8.7 percent, from \$4.6 billion in FY 1996 to \$5.0 billion in FY 1997. Major enhancements include:

- (1) Expanding the safe and drug-free schools and communities programs.
- (2) Expanding the substance abuse, prevention, and treatment programs.
- (3) Expanding treatment programs that provide treatment and rehabilitative services for incarcerated individuals in prisons, jails and juvenile detention, and probationers and parolees.

c. Interdiction increased by 7.3 percent, from the FY 1996 level of \$1.3 billion in FY 1996 to \$1.4 billion in FY 1997. Major enhancements include expanding enforcement operations on the southwest border. This includes programs of the U.S. Customs and Immigration and Naturalization Service.

d. International programs increased significantly by 25.4 percent, from \$320 million in FY 1996 to \$401 million in FY 1997. Major enhancements include:

- (1) Expanding source nation counternarcotic activities to better address drug production, trafficking, and money laundering.
- (2) Improving international controls of precursor and essential chemicals.
- (3) Supporting programs that promote democratic institutions, and assist with police training and criminal justice improvements.

Is the United States at War?

Despite the government's concern over drugs by increasing the budget, it must be determined if the nation's drug problems are severe enough to warrant an increased domestic role of military forces. Perhaps an important question would be: is the United States at War? It should be noted that increased military involvement was primarily the product of a congressional and public outcry to save America from drugs⁹. Is the United States at "war," or is the phrase merely a metaphor that the current and past administrations used merely as a rallying slogan to gain the support of the American people? When the United States is at war, the country's resources are mobilized to support the war effort. This definitely includes the active military forces. The war may be on the scale of a world war or it may be on a lesser scale such as a Desert Shield/Desert Storm. Additionally, when the United States is at war, the President presents his reasons directly to the American people to solicit their unqualified support to prosecute the war

obtains a declaration of war from the United States Congress or at a minimum obtains congressional support and funding. The United States is not at war with drugs. If the United States were at war with drugs, the Department of Defense would be in charge of international drug control policy. Instead, the Bureau of International Narcotics Matters (INM) in the U.S. Department of State is responsible for international anti-drug policy¹⁰. Additionally, all aspects of the counterdrug strategy would be under the purview of the Department of Defense if the United States were truly at war. The phrase “war on drugs” may have served as a rallying cry for the nation’s counterdrug strategy; however the case has not been made that the United States is at war internationally or domestically. An increase in the domestic use of active military forces is not needed nor warranted in the nation’s counterdrug strategy.

The Domestic Employment of Military Forces

Any valid discussion on the domestic employment of active military forces must also address the provisions of the Posse Comitatus Act of 1878 and the Congressional changes to that act in 1981 and 1994.

The original Posse Comitatus Act was enacted under Title 18, United States Code, Section 1385. This act stated:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.¹¹

This law effectively removed the military from regular civil law enforcement. It was enacted in response to the abuses resulting from the extensive use of the army in civil law enforcement during the Civil War and Reconstruction.

The Posse Comitatus Act prevents the domestic employment of active military forces without expressed congressional approval for domestic law enforcement. The law does not prevent the use of military forces internationally in support of the counterdrug strategy. For example, one of the reasons for Operation Just Cause was to apprehend General Manuel Noriega for being responsible for trafficking illegal drugs into the United States. General Noriega was tried in United States Federal Court for his alleged drug offenses after he was forcibly removed from Panama by United States armed forces. Clearly, the Posse Comitatus Act did not prohibit United States armed forces from performing this international mission.

But in the 1980's as the nation's drug usage increased and Congressional leaders wanted an increased military role in the nation's counterdrug strategy, Congress recognized the original Posse Comitatus Act was vague and unclear as to any role the military could have in supporting law enforcement agencies.

In response to this vagueness, Congress amended the original Posse Comitatus Act in 1981 (Public Law 97-86, Chapter 18) to allow local law enforcement agencies to obtain limited military support. This amendment is included under Title 10, United States Code. Chapter 18 is entitled "Military Cooperation With Civilian Law Enforcement Officials". The changes to the original Posse Comitatus Act are contained in sections 371 through 378 (see Appendix A-1). This law was amended in 1994 (Public

Law 103-322). This amendment substituted “fined under this title” for “fined not more than \$10,000.¹²” Prior to this amendment, the maximum fine amount was not legislated.

Thus, the 1981 amendment to the Posse Comitatus Act allows the military to provide information collected during normal military operations to federal, state, or local law enforcement agencies. The military can make available any equipment, base facility, or research facility to civilian law enforcement officials for law enforcement purposes. Military members may be assigned to civilian law enforcement agencies to operate and maintain loaned military equipment. They may train and advise agencies on the use of the loaned equipment. The 1981 amendment also allows the military to operate or maintain loaned equipment outside the United States in an emergency situation. The Secretary of Defense and the Attorney General must jointly determine that an emergency situation exists. Any assistance provided by military personnel should not adversely affect military preparedness or readiness.

The 1981 amendment, however, did not remove the restriction that prohibits the direct participation of military personnel in civil law enforcement. If the military is prohibited from civil law enforcement, to what extent can the military provide support to law enforcement agencies? The law states exactly what the active military can do in providing support to civilian law enforcement agencies.

Thus, in the 1981 amendment, Congress clearly removed any ambiguity or vagueness with the Posse Comitatus Act. The Posse Comitatus Act applies to the United States Reserves in the same manner that it applies to the active military.

However, provisions of the Posse Comitatus Act do not apply to the National Guard unless they are federalized under Title 10 United States Code. While the Posse Comitatus Act specifically prohibits the domestic use of active military forces, it does not prohibit the domestic employment of the National Guard while under the auspices of the various governors of the states. Under Title 32 United States Code, the National Guard submits an annual plan for drug interdiction and counterdrug activities to the various governors for approval. This annual plan is reviewed and funded by the Department of Defense. The National Guard has enacted regulations to keep personnel from performing civil law functions (except in emergency situations). However, National Guard regulations may restrict the scope of support that the National Guard may provide. These regulations bring the National Guard in line with the active military, who is prohibited by law from performing civil law functions. Thus, the National Guard may provide support to civilian law enforcement agencies in the United States under both federal law and National Guard regulations.

Within the limitations of the Posse Comitatus Act and the amendment of 1981, the military does have a role in the National Drug Control Strategy. As stated previously, the current domestic role of the military is limited to providing information, training, technical assistance, equipment, and facilities. Another quasi-domestic role that the military has is acting as the lead agency for detecting and monitoring aerial and maritime routes of shipments of illegal drugs into the United States. This includes routes within the United States. However, this lead agency

role does not give the military the authority to enforce civil law. If a plane or vessel is suspected of carrying illegal drugs for shipment into the United States, the military must contact federal, state, or local law enforcement agencies to search or detain the plane or vessel.

The National Interagency Counterdrug Institute (NICI), a federally funded activity of the National Guard Bureau, was established December 12, 1990, by the Department of Defense coordinator for Drug Enforcement Policy and Support¹³. NICI supports the National Drug Control Strategy by training representatives of law enforcement and military organizations in planning and coordinating joint counterdrug operations¹⁴.

According to the NICI¹⁵, the National Guard performs the following missions in support of the nation's counterdrug strategy (this list is not inclusive):

- a. Technical Support.
 - (1) Linguist Support (translator support). Provides transcription/translation of audio/video tapes, seized documents, and other information media. National Guard personnel will not participate in conversation monitoring or directly participate in interrogation activities.
 - (2) Operational/Investigative Support. Provides assistance to law enforcement agencies in developing investigations and cases for prosecution. Activities include, but are not limited to, inputting, reviewing, and analyzing collected law enforcement agency information and providing assistance such as attorney, paralegal, and auditing.

(3) **Engineer Support.** Provide engineer support to law enforcement agencies and community organizations where there is a counterdrug connection. This will exclude drug laboratories and hazardous materials. All law enforcement activities must be conducted and concluded before arrival of National Guard personnel.

b. **General Support.**

(1) **Domestic Cannabis Suppression/Eradication Operations Support.** This includes, but is not limited to, aerial support, logistic support, ground transportation, eradication and destruction of contraband, and spraying of herbicides.

(2) **Cargo/Mail Inspection.** Primary emphasis will be placed on ports of embarkation and functional equivalents. Civilian law enforcement officers must be present at inspection sites, make seizures, maintain custody of evidence, and maintain control of vehicle occupants.

(3) **Counterdrug Related Training.** Train law enforcement officers/military personnel in military subjects and skills useful in the conduct of counterdrug operations or in the operation of military equipment in counterdrug operations.

(4) **Reconnaissance/Observation.** Reconnoiter or perform area observation by land or water to detect and report illegal drug activities which include, but are not limited to, cultivated marijuana, suspected isolated drug airstrips and suspicious aircraft, watercraft, or motor vehicles.

(5) Demand Reduction Support. Demand Reduction support organizes National Guard resources, members, and their families in support of drug abuse prevention programs in the community.

(a) Community Based programs. This is support designed to educate, train, or otherwise prevent drug abuse among youth. This includes, but is not limited to, support of youth centers, drug free events, community recreational programs, safe havens, and community mobilization events.

(b) Educational Institutions programs. This is support to community-based activities that focus on educational institutions, or otherwise have an educational institution as the primary sponsor, and is designed to educate, train, and prevent youth from drug abuse. This includes tutoring, mentoring, and supporting the Drug Awareness Resistance and Education (D.A.R.E.) program.

(c) Leadership Development programs. These programs support camps, retreats, seminars, and programs, not primarily associated with educational institutions, that focus on developing drug abuse, prevention, and leadership skills in youth and adults.

Is The Military Responsible For Stopping Illegal Drug Use?

However, while the National Guard provides the support just discussed, this raises the question. Is the military responsible for stopping illegal drug use in America? In a recent Gallup poll (Appendix B-1), "Consult with America, A Look

at How Americans View the Country's Drug Problem¹⁶, a significant percentage (42%) of Americans revealed that they think it is incumbent upon each adult to stop illegal drug use. Only 6% of Americans felt the federal government should be responsible for stopping illegal drug use and only 3% felt the state government had a responsibility for stopping illegal drug use. In youths ages thirteen to eighteen and children under twelve, Americans felt overwhelmingly that families/parents are responsible for stopping illegal drug use (70% and 81% respectively). It would appear that Americans do not think the federal and local governments have the primary responsibility for stopping illegal drug use. This would appear to be related to the American culture of believing in the rights of the individual. Americans believe adults are responsible for their own actions or behavior.

Although Americans were not asked specifically whether or not the military should have an increased role in stopping illegal drug use, only 6% of those polled believe the federal government is responsible for stopping adult illegal drug use.

Viable Alternatives In Support of The Nation's Counterdrug Strategy

More recently, the editors of National Review published an article early in 1996 entitled "The War on Drugs is Lost"¹⁷." With that basic opinion in mind, National Review conducted a symposium to discuss the nation's counterdrug strategy. The symposium panel consisted of the following: William Buckley, an editor and writer; Ethan A. Nadelmann, a scholar and researcher; Kurt Schmoke, a mayor and former prosecutor; Joseph D. McNamara, a former police chief; Robert

W. Sweet, a federal judge and former prosecutor; Thomas Szasz, a psychiatrist; and Steven B. Duke, a law professor. This panel represented a diverse cross section of American citizens. Their opinions varied, but the central theme remained that the current counterdrug strategy needed to be relooked.

The current drug strategy is winning battles but losing the war (this paper has previously discussed the concept of “being at war”). The panel discussed its opinions on viable strategies. Its recommended solutions ranged from decriminalization to treating drug use and/or abuse as a health care issue. Professor Nadelmann states:

So far as I can ascertain, the societies that have proved most successful in minimizing drug-related harm aren’t those that have sought to banish drugs, but those that figured out how to control and manage drug use through community discipline, including the establishment of powerful social norms.¹⁸

Another prevalent thought among the group was to compare the drug issue to the way that the United States attempted to regulate the possession and use of alcohol during Prohibition. After several years of trying to enforce a difficult policy of prohibiting alcohol, the federal government repealed the law and the regulation of alcohol was levied on the individual states. The violence associated with the illegal alcohol business was greatly reduced by legalization. Perhaps the same could happen with drugs.

Mayor Schmoke of Baltimore, Maryland, supports a national commission to study all possible alternatives (including legalization) to the “failed strategy of blanket prohibition”¹⁹. Alternatives that Mayor Schmoke

“failed strategy of blanket prohibition”¹⁹. Alternatives that Mayor Schmoke suggests (including reviewing legalization) include community policing, hospitals making addiction treatment a larger part of the curriculum, and developing programs such as the needle exchange program in Baltimore.

Another alternative is to relook the mandatory minimum sentence law that Congress enacted. These mandatory minimum sentences severely restrict the judge’s discretion. Although Congress does not want to appear to be “soft” on illegal drugs, judges and prosecutors must be able to recommend and enact punishments based on the merits of individual cases. The first time offender must not be treated like the repeat offender.

In the several strategies or alternatives that Mayor Schmoke discusses in his article, he does not mention the use of active military forces in an enhanced domestic role. But an alternative to the domestic employment of active military forces is community policing. Several members of the panel discussed how well community policing has helped reduce crime in major cities such as New York City, Baltimore, and Washington D.C. Community policing is supported by the National Crime Control budget’s goal of hiring 100,000 new policemen by the year 2000.

Average Americans in a recent Gallop Poll voice the same sentiments as the distinguished panel assembled by National Review. In the Gallop Organization’s “Consult with America” poll, Americans made the following statements about drug strategies²⁰.

Agreement with Statements About Drug Strategies

% Strongly Agree

(Base = 2,016)

More money should be spent on stopping drugs from coming into the U.S. from foreign countries 64%

We should have more drug treatment available to reduce drug use 51%

If the money spent on building prisons for drug users were spent on prevention and rehabilitation, there would be significantly less crime 38%

Harsh criminal penalties for using drugs are an effective means of drug prevention 32%

We should have more severe penalties for drug users than for people who sell drugs 25%

Once a person gets addicted to drugs, treatment and rehabilitation programs usually do not work 15%

The poll confirmed that a slight majority of average American citizens believe more drug treatment should be available to reduce drug use (51%). This parallels the National Review panel's discussion that drug use/abuse should be treated as a health care issue.

The National Drug Control Strategy, 1997, discusses mobilizing resources to achieve established strategic goals. These strategic goals are:

- a. To educate and enable America's youth to reject illegal drugs as well as alcohol and tobacco.

- b. To increase the safety of America's citizens by substantially reducing drug-related crime and violence.
- c. To reduce health and social costs to the public of illegal drug use.
- d. To shield America's air, land, and sea frontiers from the drug threat.
- e. To break foreign and domestic drug sources of supply.

These domestic goals may be accomplished by nongovernment agencies and government agencies (to include the National Guard).

The 1997 strategy discusses a comprehensive approach that involve all segments of American society. The initiatives discussed include:

- a. Youth-Oriented Programs. This includes broadening "drug free zones," expanding school-based prevention programs that work, and involving corporate America. The purpose of the Youth-Oriented Programs is to educate children, parents, and mentors on the effects of drugs. The 1997 strategy further establishes drug-free environments, restricts youth access to alcohol, tobacco products, and illegal drugs. The strategy also provides treatment to individuals already caught up in the web of substance abuse.

- b. Initiatives to reduce drug-related crime and violence. This includes supporting law enforcement, community policing, and integrating federal, state, and local efforts. The 1997 strategy proposes to link law enforcement with local residents in positive ways that create trusting relationships. The intent is to bring the individual back as a contributing member of the community to help solve drug related crime and violence.

c. Initiatives to reduce health and social problems. This includes lowering entry barriers to treatment programs, expanding drug-free workplace programs, and expanding community anti-drug efforts. Making drug treatment readily available and encouraging drug users to enroll may help to reduce the demand for illegal drugs.

Conclusions

The purpose of the military is to fight and win the nation's wars. In this era of missions such as humanitarian support and disaster relief, and because the Soviet Union is no longer a military threat, this basic fact must not be forgotten.

There are more than fifty federal departments and agencies supporting the National Drug Control Strategy. Additionally, there are numerous state and local governmental agencies, and civilian activities that have an active role in supporting the national strategy. These agencies are resourced to support the nation's counterdrug strategy. In those areas that the military can provide support as defined by the 1981 amendment to the Posse Comitatus Act, support should be provided.

The military has capabilities that federal, state, and local law enforcement agencies do not have. The Posse Comitatus Act was amended to state explicitly what type of support the military could provide.

The nation's drug problems are not severe enough to warrant changes in the Posse Comitatus law! The National Guard is resourced to support federal, state, and local law enforcement agencies. The National Guard is currently performing a broad range of missions to support all law enforcement agencies. Currently, there is not a

need to expand that role and specifically, there is not a need to increase the role of the active military. The Posse Comitatus Act is still needed to prevent the use of military forces against the civilian population.

The nation has a viable strategy to support reducing the use and effects of illegal drugs on American society. The Office of National Drug Control Policy (ONDCP) must consult with an array of government and non-government agencies to develop the national strategy. If the military is to have any active role in that strategy, it must be limited to a support role. And if a military support is necessary, the National Guard is resourced to perform those support roles and should do so.

These alternatives are working. As an example, the Illinois National Guard has several successful programs working with the youth in their communities. Do not decrease their effectiveness by reducing their resources and providing an additional role for the military. Continue to resource federal, state, and local agencies in support of their domestic counterdrug activities, not the military.

The Department of Defense does not need additional missions. Specifically, the Department of Defense does not need missions that will place military forces in a civil law enforcement role or a combatant role against American citizens. There are numerous federal, state, and local law enforcement agencies trained and capable of eradicating illegal drugs from American cities with the help of concerned American citizens.

Appendix A-1

The 1981 Amendment to Posse Comitatus

1. Section 371. Use of information collected during military operations. The Secretary of Defense may, in accordance with other applicable law, provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials.
2. Section 372. Use of military equipment and facilities. The Secretary of Defense may, in accordance with other applicable law, make available any equipment, base facility, or research facility of the Army, Navy, Air Force, or Marine Corps to any Federal, State, or local civilian law enforcement official for law enforcement purposes.
3. Section 373. Training and advising civilian law enforcement officials. The Secretary of Defense may assign members of the Army, Navy, Air Force, and Marine Corps to train Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment made available under Section 372 of this title and to provide expert advice relevant to the purposes of this chapter.
4. Section 374. Assistance by Department of Defense personnel.
 - (a) Subject to subsection (b), the Secretary of Defense, upon request from the head of an agency with jurisdiction to enforce:
 - (1) the Controlled Substances Act or the Controlled Substances Import and Export Act;

(2) any of sections 274 through 278 of the Immigration and Nationality Act; or

(3) a law relating to the arrival or departure of merchandise into or out of the customs territory of the United States or any other territory or possession of the United States, may assign personnel of the Department of Defense to operate and maintain or assist in operating and maintaining equipment made available under section 372 of this title with respect to any criminal violation of any such provision of law.

(b) Except as provided in subsection (c), equipment made available under section 372 of this title may be operated by or with the assistance of personnel assigned under subsection (a) only to the extent the equipment is used for monitoring and communicating the movement of air and sea traffic.

(c)

(1) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used outside the land area of the United States (or any territory or possession of the United States) as a base of operations by Federal law enforcement officials to facilitate the enforcement of a law listed in subsection (a) and to transport such law enforcement officials in connection with such operations, if:

a. equipment operated by or with the assistance of personnel assigned under subsection (a) is not used to interdict or to interrupt the passage of vessels or aircraft; and

b. the Secretary of Defense and the Attorney General jointly determine that an emergency circumstance exists.

(2) For purposes of this subsection, an emergency circumstance may be determined to exist only when--

- a. the size or scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and
- b. enforcement of a law listed in subsection (a) would be seriously impaired if the assistance described in this subsection were not provided.

5. Section 375. Restriction on direct participation by military personnel. The Secretary of Defense shall issue such regulations as may be necessary to insure that the provision of any assistance (including the provision of any equipment or facility or the assignment of any personnel) to any civilian law enforcement official under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in an interdiction of a vessel or aircraft, a search and seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.

6. Section 376. Assistance not to affect adversely military preparedness. Assistance (including the provision of any equipment or facility or the assignment of any personnel) may not be provided to any civilian law enforcement official under this chapter if the provision of such assistance will adversely affect the military preparedness of the United States. The Secretary of Defense shall issue such regulations as may be necessary to

insure that the provision of any such assistance does not adversely affect the military preparedness of the United States.

7. Section 377. Reimbursement. The Secretary of Defense shall issue regulations providing that reimbursement may be a condition of assistance to a civilian law enforcement official under this chapter.

8. Section 378. Nonpreemption of other law. Nothing in this chapter shall be construed to limit the authority of the executive branch in the use of military personnel or equipment for civilian law enforcement purposes beyond that provided by law prior to the enactment of this chapter.

Appendix B-1

Who Is Responsible for Stopping Illegal Drug Use

Among Following Groups

<u>(Base = 2,016)</u>	<i>Adults</i>	<i>Youths 13 to 18</i>	<i>Children Under 12</i>
<i>Each of us/individuals</i>	42%	5%	1%
<i>Police</i>	22%	5%	2%
<i>Families/Parents</i>	10%	70%	81%
<i>Federal Government</i>	6%	3%	3%
<i>Cities/communities/ neighborhoods</i>	3%	2%	1%
<i>Schools</i>	1%	5%	3%
<i>State Government</i>	3%	1%	1%
<i>Other</i>	14%	4%	3%

Bolding indicates top responses for each age group

Source: Gallup Organization (1996)

ENDNOTES

¹ Executive Office Of The President, Office Of National Drug Control Policy, The National Drug Control Strategy: 1996, page 11.

² Clifford A. Schaffer, "Basic Facts About the War on Drugs." <<http://www.calyx.net/~schaffer/LIBRARY/basicfax.html>>, page 1.

³ Ibid.

⁴ Ibid, page 2.

⁵ Ibid.

⁶ Ibid.

⁷ Joseph B. Treaster, "20 Years of War on Drugs, and No Victory Yet," New York Times 14 June 1992, section IV, p. 14.

⁸ Executive Office of the President, Office Of National Drug Control Policy, Reducing Drug Use and its Consequences in America. August 16, 1996, pages 6-7.

⁹ Leif R. Rosenberger, America's Drug War Debacle, (Vermont: Avebury, Ashgate Publishing Co., 1996), 29.

¹⁰ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Drugs, Crime, and the Justice System. December, 1992, page 102.

¹¹ Use of Army and Air Force As Posse Comitatus, U.S. Code, Vol. 9, sec 1385 (1995).

¹² Ibid.

¹³ Ibid, page 6-10.

¹⁴ Ibid.

¹⁵ The National Interagency Counterdrug Institute (NICI), "Resource Guide," Counterdrug Manager's Course, (August 1996), pages 6-5 through 6-10.

¹⁶ The Gallup Organization, "Consult with America, A Look at How Americans View the Country's Drug Problem," (March 1996), page 43.

¹⁷ National Review, "The War on Drugs is Lost," <<http://www.xs4all.nl/~mlap/special/wod.html>>, 31 October 1996.

¹⁸ Ethan A. Nadelmann, "The War on Drugs is Lost," <<http://www.xs4all.nl/~mlap/special/wodnad.html>>, 31 October 1996, page 1.

¹⁹ Kurt Schmoke, "The War on Drugs is Lost," <<http://www.xs4all.nl/~mlap/special/wodsmo.html>>, 31 October 1996, page 1.

²⁰ Ibid, Gallup Organization, page 33.

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